IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 30570 of 2005(L)

PETITIONER:

A.DAMODARAN NAMBOODIRI,
PART TIME SANSKRIT TEACHER, PERINKULAM,
A.U.P.SCHOOL, PERINKULAM, PALAKKAD.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER
SMT.BINDHU ANTONY
(PETITONER'S NAME CORRECTED AS 'A. DAMODARAN' INSTEAD OF 'A. DAMODARAN NAMBOODIRI' AS PER ORDER IN I.A.12393/07 DATED 18.9.2007)

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY
ITS SECRETARY, DEPARTMENT OF GENERAL EDUCATION,
THIRUVANANTHAPURAM.

2. THE JOINT DIRECTOR OF PUBLIC
INSTRUCTION, THIRUVANANTHAPURAM.

3. THE MANAGER, PERINKULAM A.U.P.SCHOOL,
PERINKULAM, PALAKKAD.

BY GOVERNMENT PLEADER SRI. T.T. MOHAMMED
SRI.GEORGE ABRAHAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITONER'S EXHIBITS

EXT.P1: TRUE COPY OF ORDER NO.D.DIS 71199/02/RA(3)/DPI DATED 21.11.2002 OF THE 2ND RESPONDENT.

EXT.P2: TRUE COPY OF G.O.(RT)NO.1414/04/G.EDN DATED 5.4.2004 OF THE GOVERNMENT OF KERALA, GENERAL EDUCATION (E) DEPARTMENT.

EXT.P3: TRUE COPY OF ORDER NO.27152/E2/04/G. EDN DATED 4.6.2005 OF THE GOVERNMENT OF KERALA, GENERAL EDUCATION (E) DEPARTMENT.

EXT.P4: TRUE COPY OF TABLE ALLOTTIN 15 PERIODS TO THE PETITIONER BY DIVERTING 3 PERIODS FROM THAT OF THE CRAFT TEACHER FOR THE YEAR 2001-02.

EXT.P5: TRUE COPY OF TABLE ALLOTTING 15 PERIODS TO THE PETITIONER BY DIVERTING 3 PERIODS FROM THAT OF THE CARFT TEACHER FOR THE YEAR 2002-03.

EXT.P6: TRUE COPY OF TABLE SHOWING THE PERIOD ALLOTTED TO THE CRAFT TEACHER FOR THE YEAR 2001-02.

EXT.P7: TRUE COPY OF TABLE SHOWING THE PERIOD ALLOTTED TO THE CRAFT TEACHER FOR THE YEAR 2002-03.

RESPONDENT'S EXHIBITS

EXT.R3(A): TRUE COPY OF PROCEEDINGS OF THE ASSISTANT EDUCATIONAL OFFICER, ALATHUR NO.D.DIS G 2800/2000 DATED 10.7.2000.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NO. 30570 OF 2005

DATED THIS THE 18th DAY OF SEPTEMBER, 2007

JUDGMENT

The petitioner is working as a part-time Sanskrit teacher in the school managed by the 3rd respondent. He was appointed in a vacancy of retirement of one Sulochana Amma. The said Sulochana Amma was also initially a part- time Sanskrit teacher but later the post was converted as a full time post in terms of G.O.(MS)No.43/78/G.Edn. dated, 13.4.78 which extended the concession granted to Arabic teachers in G.O.(Rt) No.5014/68/Edn. dated 8.11.68, by which, for the purpose of granting full time benefits, periods from group 'C' subjects could be diverted for Arabic. By virtue of G.O.(MS)43/78 the Sanskrit teacher also get the very same benefit. Accordingly, three periods from group 'C' subjects were diverted to Sanskrit for giving full time benefits to the said Sulochana Amma. It is to the retirement vacancy of the said Sulochana Amma that the petitioner was appointed. The Manager of the school filed Ext.P1 application before the D.E.O seeking permission to divert three

periods from group ‘C’ subjects to Sanskrit for the purpose of granting full time benefits to the petitioner in terms of the said government orders. The Manger’s request was rejected by Ext.P1. The petitioner challenged Ext.P1. Pursuant to order in O.P.No.706/03, the petitioner’s revision petition was considered, but rejected by Ext.P2 order. A review petition filed was also rejected by Ext.P3. The petitioner is challenging Exts.P1 to P3 in this writ petition seeking a direction to the respondents to convert the post of the petitioner as full time teacher by accepting the diversion of three periods from group 'C' subjects, with effect from 6.6.01 and to grant him all monetary and other benefits consequential thereto.

2. The question which has to be decided in this case is as to whether there is scope for diversion of three periods from group ‘C’ subjects to Sanskrit, so as to enable the petitioner to be appointed as full time Sanskrit teacher. It is not disputed before me that by virtue of G.O.(MS)43/78 such diversion is permitted. The petitioner would contend that there are Physical Education periods as well as Craft periods available for diversion without affecting the said subjects.

3. The contention of the learned Government pleader

is that since there is no Physical Education teacher, the question of availability of Physical Education periods and diversion of the same does not arise. Regarding the Craft periods the Government pleader would contend that in the 3rd respondent's school there are only protected teachers in Craft since the minimum number of students of 500 prescribed for appointment of specialist teachers is not available in the school.

4. Regarding the first contention, the learned counsel for the petitioner refers to a Government letter No.51064/J2/91/G.Edn. dated 27.12.1991 issued to the Accountant General, Thiruvananthapuram in which in paragraph 3, it is specifically stated thus:

> "3. It is further clarified that:
>
> (a) if there is post and teacher in a particular subject under group C and the periods available is not more than 15 and above for the subject, diversion of periods from that subject cannot be permitted.
>
> (b) if there is no post of specialist/Craft teacher in the school the periods for the group-C subject for which there is no specialist/Craft teacher can be diverted to
>
> Arabic : 1 period Maximum per each standard
> Sanskrit : 1 period do
> Urdu : 1 period do
> Hindi : 1 period do"

Therefore, according to the learned counsel even if there is no

post of teacher in a particular subject under group 'C' subjects, the periods available can be diverted to Sanskrit.

5. Regarding the second contention, the counsel would submit that the question of protection does not arise since the Craft teachers available are teachers who are continuing as regular teachers and not as protected teachers by virtue of orders of the Government. With the help of copies of time tables, issued by the Headmistress of the school, namely Exts.P4 to P6, he points out that there are 24 periods for Craft in the school and therefore, three periods one each from each standard can easily be diverted to Sanskrit for the purpose of granting full time benefits to the petitioner. It is also submitted before me that the petitioner was in fact working for 15 periods which would entitle him for monetary benefits also as full time.

6. The learned Government pleader could not satisfy me that the Government letter referred to above is not applicable to the petitioner's case. He also could not controvert the contention that although the Craft teachers are continuing by virtue of Government orders, they are not regular teachers. Whatever that be, it cannot be disputed that

Physical Education periods and Craft periods are available in the school which can be diverted to Sanskrit for the purpose of Ext.P1. Going by the government letter referred to even if there are no specialist/Craft teachers such diversion is permissible. That being so, the action of the respondents in not allowing the request of the manger for diversion is clearly unsustainable.

7. Accordingly, Exts.P1 to P3 are quashed and the 1st respondent is directed to issue appropriate orders granting sanction to the manager for conversion of three periods in group 'C' subjects to Sanskrit for the purpose of giving full time benefits to the petitioner. Needless to say, such conversion shall be given retrospective effect from 6.6.01. Orders in this regard shall be issued within a period of one month from the date of receipt of a copy of this judgment and arrears of monetary benefits disbursed within another month.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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